

109TH CONGRESS
2D SESSION

H. R. 5115

To amend the Internal Revenue Code of 1986 to modernize the tax treatment of biomedical research corporations.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2006

Ms. HART (for herself, Mr. ENGLISH of Pennsylvania, and Mr. WELLER) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to modernize the tax treatment of biomedical research corporations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “U.S. Healthcare Technologies Competitiveness Act of
6 2006”.

7 (b) AMENDMENT OF 1986 CODE.—Except as other-
8 wise expressly provided, whenever in this Act an amend-
9 ment or repeal is expressed in terms of an amendment
10 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 (c) TABLE OF CONTENTS.—

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4 **TITLE I—PROVISIONS RELATING**
 5 **TO CORPORATE TAX INCEN-**
 6 **TIVES**

7 **SEC. 101. MODIFY CHANGE OF OWNERSHIP RULES.**

8 (a) IN GENERAL.—Subsection (l) of section 382 is
 9 amended by adding at the end the following new para-
 10 graph:

11 “(9) CERTAIN FINANCING TRANSACTIONS OF
 12 BIOMEDICAL RESEARCH CORPORATIONS.—

13 “(A) GENERAL RULE.—In the case of a
 14 biomedical research corporation, any owner

1 shift involving a 5-percent shareholder which
2 occurs as the result of a qualified investment or
3 qualified transaction during the testing period
4 shall be treated for purposes of this section
5 (other than this paragraph) as occurring before
6 the testing period.

7 “(B) BIOMEDICAL RESEARCH CORPORA-
8 TION.—For purposes of this paragraph, the
9 term ‘biomedical research corporation’ means,
10 with respect to any qualified investment, any
11 domestic corporation subject to tax under this
12 subchapter which is not in bankruptcy and
13 which, as of the time of the closing on such in-
14 vestment—

15 “(i) holds the rights to a drug or bio-
16 logic for which an investigational new drug
17 application is in effect under section 505
18 of the Federal Food, Drug, and Cosmetic
19 Act, or holds the rights to a device for
20 which an investigational device exemption
21 is approved under section 520(g) of such
22 Act, and

23 “(ii) certifies that, as of the time of
24 such closing, the drug, biologic, or device
25 is, or in the 6 month period beginning 3

1 months before such closing has been,
2 under study pursuant to an investigational
3 use exemption under section 505(i) or sec-
4 tion 520(g) of the Federal Food, Drug,
5 and Cosmetic Act.

6 “(C) QUALIFIED INVESTMENT.—For pur-
7 poses of this paragraph, the term ‘qualified in-
8 vestment’ means any acquisition of stock by a
9 shareholder (who after such acquisition is a less
10 than 50 percent shareholder) in a biomedical
11 research corporation if such stock is acquired at
12 its original issue (directly or through an under-
13 writer) solely in exchange for cash.

14 “(D) QUALIFIED TRANSACTION.—For pur-
15 poses of this paragraph, the term ‘qualified
16 transaction’ means any acquisition of stock in a
17 biomedical research corporation if such stock is
18 acquired as part of a merger or acquisition by
19 another biomedical research corporation that is
20 a loss corporation. If the acquiring loss corpora-
21 tion is a member of a controlled group of cor-
22 porations under section 1563(a), the group
23 must be a loss group.

24 “(E) STOCK ISSUED IN EXCHANGE FOR
25 CONVERTIBLE DEBT.—For purposes of this

1 paragraph, stock issued by a biomedical re-
2 search corporation in exchange for its convert-
3 ible debt (or stock deemed under this section to
4 be so issued) shall be treated as stock acquired
5 by the debt holder at its original issue and sole-
6 ly in exchange for cash if the debt holder pre-
7 viously acquired the convertible debt at its
8 original issue and solely in exchange for cash.
9 In the case of an acquisition of stock in ex-
10 change for convertible debt, the requirements of
11 this paragraph shall be applied separately as of
12 the time of closing on the investment in con-
13 vertible debt, and as of the time of actual con-
14 version (or deemed conversion under this sec-
15 tion) of the convertible debt for stock.

16 “(F) BIOMEDICAL RESEARCH CORPORA-
17 TION MUST MEET 3-YEAR EXPENDITURE AND
18 CONTINUITY OF BUSINESS TESTS WITH RE-
19 SPECT TO ANY QUALIFIED INVESTMENT.—

20 “(i) IN GENERAL.—This paragraph
21 shall not apply to a qualified investment or
22 transaction in a biomedical research cor-
23 poration unless such corporation meets the
24 expenditure test for each year of the meas-

1 uring period and the continuity of business
2 test.

3 “(ii) MEASURING PERIOD.—For pur-
4 poses of this subparagraph, the term
5 ‘measuring period’ means, with respect to
6 any qualified investment or transaction,
7 the taxable year of the biomedical research
8 corporation in which the closing on the in-
9 vestment occurs, and the 2 preceding tax-
10 able years.

11 “(iii) EXPENDITURE TEST.—A bio-
12 medical research corporation meets the ex-
13 penditure test of this subparagraph for a
14 taxable year if at least 35 percent of its ex-
15 penditures for the taxable year (including,
16 for purposes of this clause, payments in re-
17 demption of its stock) are expenditures de-
18 scribed in section 41(b) or clinical and pre-
19 clinical expenses.

20 “(iv) CONTINUITY OF BUSINESS
21 TEST.—A biomedical research corporation
22 meets the continuity of business test if, at
23 all times during the 2-year period following
24 a qualified investment or transaction, such

1 corporation continues the business enter-
2 prise of such corporation.

3 “(G) EFFECT OF CORPORATE REDEMP-
4 TIONS ON QUALIFIED INVESTMENTS.—Rules
5 similar to the rules of section 1202(c)(3) shall
6 apply to qualified investments under this para-
7 graph except that ‘stock acquired in a qualified
8 investment’ shall be substituted for ‘qualified
9 small business stock’ each place it appears
10 therein.

11 “(H) EFFECT OF OTHER TRANSACTIONS
12 BETWEEN BIOMEDICAL RESEARCH CORPORA-
13 TIONS AND INVESTORS MAKING QUALIFIED IN-
14 VESTMENTS.—

15 “(i) IN GENERAL.—If, during the 2-
16 year period beginning 1 year before any
17 qualified investment, the biomedical re-
18 search corporation engages in another
19 transaction with a member of its qualified
20 investment group and such biomedical re-
21 search corporation receives any consider-
22 ation other than cash in such transaction,
23 there shall be a presumption that stock re-
24 ceived in the otherwise qualified investment

1 transaction was not received solely in ex-
2 change for cash.

3 “(ii) QUALIFIED INVESTMENT
4 GROUP.—For purposes of this subpara-
5 graph, the term ‘qualified investment
6 group’ means, with respect to any qualified
7 investment, one or more persons who re-
8 ceive stock issued in exchange for the
9 qualified investment, and any person re-
10 lated to such persons within the meaning
11 of section 267(b) or section 707(b).

12 “(iii) REGULATIONS.—The Secretary
13 may promulgate regulations exempting
14 from this subparagraph transactions which
15 are customary in the bioscience research
16 industry and are of minor value relative to
17 the amount of the qualified investment.
18 The Secretary may issue such regulations
19 as may be appropriate to achieve the pur-
20 poses of this paragraph to prevent abuse
21 and to provide for treatment of biomedical
22 research corporations under sections 383
23 and 384 that is consistent with the pur-
24 poses of this paragraph.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 December 31, 2006.

4 **SEC. 102. NET OPERATING LOSSES UNDER ALTERNATIVE**
5 **MINIMUM TAX.**

6 (a) IN GENERAL.—Section 56(d)(1) (defining alter-
7 native tax net operating loss deduction) is amended by
8 striking “and” at the end of subparagraph (A), by striking
9 the period at the end of subparagraph (B) and inserting
10 “, and”, and by adding at the end the following new sub-
11 paragraph:

12 “(C) in the case of biomedical research
13 corporations (as defined in section
14 382(l)(9)(B)), the amount of such deduction
15 shall not exceed the alternative minimum tax-
16 able income determined without regard to such
17 deduction.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to taxable years beginning after
20 December 31, 2006.

21 **SEC. 103. RESEARCH CREDIT EXPANSION.**

22 (a) PERMANENT EXTENSION OF RESEARCH CRED-
23 IT.—

1 (1) IN GENERAL.—Section 41 (relating to cred-
2 it for increasing research activities) is amended by
3 striking subsection (h).

4 (2) CONFORMING AMENDMENT.—Paragraph (1)
5 of section 45C(b) is amended by striking subpara-
6 graph (D).

7 (3) EFFECTIVE DATE.—The amendments made
8 by this subsection shall apply to amounts paid or in-
9 curred after the date of the enactment of this Act.

10 (b) INCREASE IN RATES OF ALTERNATIVE INCRE-
11 MENTAL CREDIT.—Subparagraph (a) of section 41(c)(4)
12 (relating to election of alternative incremental credit) is
13 amended—

14 (1) in clause (i) by striking “2.65 percent” and
15 inserting “3 percent”,

16 (2) in clause (ii) by striking “3.2 percent” and
17 inserting “4 percent”, and

18 (3) in clause (iii) by striking “3.75 percent”
19 and inserting “5 percent”.

20 (c) ALTERNATIVE SIMPLIFIED CREDIT FOR QUALI-
21 FIED RESEARCH EXPENSES.—

22 (1) IN GENERAL.—Subsection (c) of section 41
23 (relating to base amount) is amended by redesign-
24 nating paragraphs (5) and (6) as paragraphs (6)

1 and (7), respectively, and by inserting after para-
2 graph (4) the following new paragraph:

3 “(5) ELECTION OF ALTERNATIVE SIMPLIFIED
4 CREDIT.—

5 “(A) IN GENERAL.—At the election of the
6 taxpayer, the credit determined under sub-
7 section (a)(1) shall be equal to 12 percent of so
8 much of the qualified research expenses for the
9 taxable year as exceeds 50 percent of the aver-
10 age qualified research expenses for the 3 tax-
11 able years preceding the taxable year for which
12 the credit is being determined.

13 “(B) SPECIAL RULE IN CASE OF NO
14 QUALIFIED RESEARCH EXPENSES IN ANY OF 3
15 PRECEDING TAXABLE YEARS.—

16 “(i) TAXPAYERS TO WHICH SUBPARA-
17 GRAPH APPLIES.—The credit under this
18 paragraph shall be determined under this
19 subparagraph if the taxpayer does not have
20 qualified research expenses in any 1 of the
21 3 taxable years preceding the taxable year
22 for which the credit is being determined.

23 “(ii) CREDIT RATE.—The credit de-
24 termined under this subparagraph shall be

1 equal to 6 percent of the qualified research
2 expenses for the taxable year.

3 “(C) ELECTION.—An election under this
4 paragraph shall apply to the taxable year for
5 which made and all succeeding taxable years
6 unless revoked with the consent of the Sec-
7 retary. An election under this paragraph may
8 not be made for any taxable year to which an
9 election under paragraph (4) applies.”.

10 (2) COORDINATION WITH ELECTION OF ALTER-
11 NATIVE INCREMENTAL CREDIT.—Section
12 41(c)(4)(B) (relating to election) is amended by add-
13 ing at the end the following: “An election under this
14 paragraph may not be made for any taxable year to
15 which an election under paragraph (5) applies.”.

16 (d) CONTRACT RESEARCH EXPENSES.—Subpara-
17 graph (D) of section 41(b)(3) (relating to contract re-
18 search expenses) is amended—

19 (1) in the heading by inserting “BIOMEDICAL
20 RESEARCH CORPORATIONS,” after “ELIGIBLE SMALL
21 BUSINESSES,” and

22 (2) in clause (i) by redesignating subclauses
23 (II) and (III) as subclauses (III) and (IV) respec-
24 tively, and by inserting after subclause (I) the fol-
25 lowing new subclause:

1 “(II) a biomedical research cor-
 2 poration (as defined in section
 3 382(l)(9)(B)),”.

4 (e) BASIC RESEARCH EXPENSES OF QUALIFYING
 5 BIOMEDICAL RESEARCH CORPORATION.—Section
 6 41(e)(3) is amended to read as follows:

7 “(3) QUALIFIED ORGANIZATION BASE PERIOD
 8 AMOUNT.—For purposes of this subsection—

9 “(A) IN GENERAL.—The term ‘qualified
 10 organization base period amount’ means an
 11 amount equal to the sum of—

12 “(i) the minimum basic research
 13 amount, plus

14 “(ii) the maintenance-of-effort
 15 amount.

16 “(B) BIOMEDICAL RESEARCH CORPORA-
 17 TION.—In the case of a biomedical research
 18 corporation, the qualified organization base pe-
 19 riod amount is zero.”.

20 (f) EFFECTIVE DATE.— The amendments made by
 21 this section shall apply to taxable years beginning after
 22 December, 31, 2006.

23 **SEC. 104. MEDICAL INNOVATION TAX CREDIT.**

24 (a) IN GENERAL.—Subpart D of part IV of sub-
 25 chapter A of chapter 1 (relating to business related cred-

1 its) is amended by inserting after section 41 the following
 2 new section:

3 **“SEC. 41A. CREDIT FOR MEDICAL INNOVATION EXPENSES.**

4 “(a) GENERAL RULE.— For purposes of section 38,
 5 the medical innovation credit determined under this sec-
 6 tion for the taxable year shall be an amount equal to 40
 7 percent of the excess (if any) of—

8 “(1) the qualified medical innovation expenses
 9 for the taxable year, over

10 “(2) the medical innovation base period
 11 amount.

12 “(b) QUALIFIED MEDICAL INNOVATION EX-
 13 PENSES.—For purposes of this section—

14 “(1) IN GENERAL.—The term ‘qualified medical
 15 innovation expenses’ means the amounts paid or in-
 16 curred by the taxpayer during the taxable year di-
 17 rectly or indirectly to any qualified academic institu-
 18 tion for clinical testing research activities.

19 “(2) CLINICAL TESTING RESEARCH ACTIVI-
 20 TIES.—

21 “(A) IN GENERAL.—The term ‘clinical
 22 testing research activities’ means human clinical
 23 testing conducted at any qualified academic in-
 24 stitution in the development of any product,
 25 which occurs before—

1 “(i) the date on which an application
2 with respect to such product is approved
3 under section 505(b), 506, or 507 of the
4 Federal Food, Drug, and Cosmetic Act,

5 “(ii) the date on which a license for
6 such product is issued under section 351 of
7 the Public Health Service Act, or

8 “(iii) the date on which classification
9 or approval of such product which is a de-
10 vice intended for human use is given under
11 section 513, 514, or 515 of the Federal
12 Food, Drug, and Cosmetic Act.

13 “(B) PRODUCT.—The term ‘product’
14 means any drug, biologic, or medical device.

15 “(3) QUALIFIED ACADEMIC INSTITUTION.—The
16 term ‘qualified academic institution’ means any of
17 the following institutions:

18 “(A) EDUCATIONAL INSTITUTION.—An or-
19 ganization described in section 170(b)(1)(A)(iii)
20 which is owned or affiliated with an institution
21 of higher education as described in section
22 3304(f).

23 “(B) TEACHING HOSPITAL.—A teaching
24 hospital which—

1 “(i) is publicly supported or owned by
 2 an organization described in section
 3 501(c)(3), and

4 “(ii) is affiliated with an organization
 5 meeting the requirements of subparagraph
 6 (A).

7 “(C) FOUNDATION.—A medical research
 8 organization described in section 501(c)(3)
 9 (other than a private foundation) which is affli-
 10 ated with, or owned by—

11 “(i) an organization meeting the re-
 12 quirements of subparagraph (A), or

13 “(ii) a teaching hospital meeting the
 14 requirements of subparagraph (B).

15 “(D) CHARITABLE RESEARCH HOS-
 16 PITAL.—A hospital that is designated as a can-
 17 cer center by the National Cancer Institute.

18 “(4) EXCLUSION FOR AMOUNTS FUNDED BY
 19 GRANTS, ETC.—The term ‘qualified medical innova-
 20 tion expenses’ shall not include any amount to the
 21 extent such amount is funded by any grant, con-
 22 tract, or otherwise by another person (or any gov-
 23 ernmental entity).

24 “(c) MEDICAL INNOVATION BASE PERIOD
 25 AMOUNT.—For purposes of this section, the term ‘medical

1 innovation base period amount’ means the average annual
2 qualified medical innovation expenses paid by the taxpayer
3 during the 3-taxable year period ending with the taxable
4 year immediately preceding the first taxable year of the
5 taxpayer beginning after December 31, 2006.

6 “(d) SPECIAL RULES.—

7 “(1) LIMITATION ON FOREIGN TESTING.—No
8 credit shall be allowed under this section with re-
9 spect to any clinical testing research activities con-
10 ducted outside the United States.

11 “(2) CERTAIN RULES MADE APPLICABLE.—
12 Rules similar to the rules of subsections (f) and (g)
13 of section 41 shall apply for purposes of this section.

14 “(3) ELECTION.—This section shall apply to
15 any taxpayer for any taxable year only if such tax-
16 payer elects to have this section apply for such tax-
17 able year.

18 “(4) COORDINATION WITH CREDIT FOR IN-
19 CREASING RESEARCH EXPENDITURES AND WITH
20 CREDIT FOR CLINICAL TESTING EXPENSES FOR CER-
21 TAIN DRUGS FOR RARE DISEASES.—Any qualified
22 medical innovation expense for a taxable year to
23 which an election under this section applies shall not
24 be taken into account for purposes of determining

1 the credit allowable under section 41 or 45C for
2 such taxable year.”.

3 (b) CREDIT TO BE PART OF GENERAL BUSINESS
4 CREDIT.—

5 (1) IN GENERAL.—Section 38(b) (relating to
6 current year business credits) is amended by striking
7 “and” at the end of paragraph (29), by striking the
8 period at the end of paragraph (30) and inserting “,
9 and”, and by adding at the end the following new
10 paragraph:

11 “(31) the medical innovation credit determined
12 under section 41A(a).”.

13 (2) TRANSITION RULE.—Section 39(d) is
14 amended by adding at the end the following new
15 paragraph:

16 “(9) NO CARRYBACK OF SECTION 41A CREDIT
17 BEFORE ENACTMENT.—No portion of the unused
18 business credit for any taxable year which is attrib-
19 utable to the medical innovation credit determined
20 under section 41A may be carried back to a taxable
21 year beginning before January 1, 2007.”.

22 (c) DENIAL OF DOUBLE BENEFIT.—Section 280C is
23 amended by adding at the end the following new sub-
24 section:

25 “(e) MEDICAL INNOVATION CREDIT.—

1 “(1) IN GENERAL.—No deduction shall be al-
 2 lowed for that portion of the qualified medical inno-
 3 vation expenses (as defined in section 41A(b)) other-
 4 wise allowable as a deduction for the taxable year
 5 which is equal to the amount of the credit deter-
 6 mined for such taxable year under section 41A(a).

7 “(2) CERTAIN RULES TO APPLY.—Rules similar
 8 to the rules of paragraphs (2), (3), and (4) of sub-
 9 section (c) shall apply for purposes of this sub-
 10 section.”.

11 (d) DEDUCTION FOR UNUSED PORTION OF CRED-
 12 IT.—Section 196(c) (defining qualified business credits) is
 13 amended by striking “and” at the end of paragraph (12),
 14 by striking the period at the end of paragraph (13) and
 15 inserting “, and”, and by inserting after paragraph (13)
 16 the following new paragraph:

17 “(14) the medical innovation credit determined
 18 under section 41A(a).”.

19 (e) CLERICAL AMENDMENT.—The table of sections
 20 for subpart D of part IV of subchapter A of chapter 1
 21 is amended by adding after the item relating to section
 22 41 the following new item:

 “Sec. 41A. Credit for medical innovation expenses.”.

23 (f) EFFECTIVE DATE.—The amendments made by
 24 this section shall apply to taxable years beginning after
 25 December 31, 2006.

1 **SEC. 105. ORPHAN DRUG CREDIT EXPANSION.**

2 (a) IN GENERAL.—Subclause (I) of section
3 45C(b)(2)(A)(ii) of the Internal Revenue Code of 1986 is
4 amended to read as follows:

5 “(I) after the date that the application is
6 filed for designation under such section 526 of
7 such Act, and”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to amounts paid or incurred in tax-
10 able years beginning after December 31, 2006.

11 **SEC. 106. COUNTERMEASURES AND PANDEMIC FLU RE-**
12 **SEARCH INCENTIVES.**

13 (a) ELECTION OF FEDERAL TAX INCENTIVE RE-
14 GIME.—

15 (1) IN GENERAL.—A biomedical research cor-
16 poration (as defined in section 382(l)(9)(B) of the
17 Internal Revenue Code of 1986) may elect to apply
18 the tax incentive described in subparagraph (A),
19 (B), or (C) for a taxable year, but such biomedical
20 research corporation may not elect to apply more
21 than one such tax incentive for such taxable year.

22 (A) RESEARCH AND DEVELOPMENT LIM-
23 ITED PARTNERSHIPS TO FUND COUNTER-
24 MEASURE RESEARCH.—

25 (i) IN GENERAL.—A biomedical re-
26 search corporation that elects the tax in-

centive described in this subparagraph may establish a limited partnership organized primarily for research related to covered countermeasures, but only if such corporation is a qualified small business as determined under section 1202(d) of the Internal Revenue Code of 1986, by substituting “\$750,000,000” for “\$50,000,000” each place it appears. For purposes of this subparagraph, section 469 of such Code shall not apply with respect to a limited partnership established under this subparagraph.

(ii) COVERED COUNTERMEASURE.—

The term “covered countermeasure” has the meaning given such term in division C of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006.

(B) CAPITAL GAINS EXCLUSION FOR INVESTORS TO FUND COUNTERMEASURE RESEARCH.—A biomedical research corporation that elects the tax incentive described in this subparagraph may issue a class of stock for research related to covered countermeasures (as

defined in subparagraph (A)(ii)) under section 1202 of the Internal Revenue Code of 1986 with the following modifications:

(i) INCREASED EXCLUSION FOR NON-CORPORATE TAXPAYERS.—Subsection (a) of section 1202 of such Code shall be applied by substituting “100 percent” for “50 percent”.

(ii) APPLICATION TO CORPORATE TAXPAYERS.—Subsection (a) of section 1202 of such Code shall be applied without regard to the phrase “other than a corporation”.

(iii) REDUCTION IN HOLDING PERIOD.—Subsection (a) of section 1202 of such Code shall be applied by substituting “3 years” for “5 years”.

(iv) NONAPPLICATION OF PER-ISSUER LIMITATION.—Section 1202 of such Code shall be applied without regard to subsection (b) (relating to per-issuer limitations on taxpayer’s eligible gain).

(v) STOCK OF LARGER BUSINESSES ELIGIBLE FOR EXCLUSION.—Paragraph (1) of section 1202(d) of such Code (defin-

ing qualified small business) shall be applied by substituting “\$750,000,000” for “\$50,000,000” each place it appears.

(vi) MODIFICATION OF WORKING CAPITAL LIMITATION.—Section 1202(e)(6) of such Code shall be applied—

(I) in subparagraph (B), by substituting “5 years” for “2 years”, and

(II) without regard to the last sentence.

(vii) NONAPPLICATION OF MINIMUM TAX PREFERENCE.—Section 57(a) of such Code (relating to general rule for items of tax preference) shall be applied without regard to paragraph (7).

(C) TAX CREDIT TO FUND COUNTERMEASURE RESEARCH.—A biomedical research corporation that elects the tax incentive described in this subparagraph may elect to apply the tax credit described in subsection (b).

(2) REPORTING.—Each biomedical research corporation shall submit to the Secretary of the Treasury such information regarding its election of a tax incentive under this section as the Secretary determines necessary.

1 (b) TAX CREDIT TO FUND COUNTERMEASURE RE-
2 SEARCH.—

3 (1) IN GENERAL.—Subpart D of part IV of
4 subchapter A of chapter 1 (relating to business re-
5 lated credits) is amended by adding at the end the
6 following new section:

7 **“SEC. 45N. CREDIT FOR MEDICAL RESEARCH RELATED TO**
8 **DEVELOPING COUNTERMEASURES.**

9 “(a) GENERAL RULE.—For purposes of section 38,
10 in the case of a biomedical research corporation that
11 makes an election, pursuant to section 106(a) of the U.S.
12 Healthcare Technologies Competitiveness Act of 2006, to
13 have this section apply, the countermeasures research
14 credit determined under this section for the taxable year
15 is an amount equal to 35 percent of the eligible counter-
16 measures research expenses for the taxable year.

17 “(b) ELIGIBLE COUNTERMEASURES RESEARCH EX-
18 PENSES.—For purposes of this section—

19 “(1) ELIGIBLE COUNTERMEASURES RESEARCH
20 EXPENSES.—

21 “(A) IN GENERAL.—Except as otherwise
22 provided in this paragraph, the term ‘eligible
23 countermeasures research expenses’ means
24 amounts paid or incurred by the taxpayer dur-
25 ing the taxable year for research, including pre-

1 clinical research and animal model development,
2 which would be described in subsection (b) of
3 section 41 if such subsection were applied with
4 the modifications set forth in subparagraph (B)
5 of this paragraph and that the Secretary of
6 Health and Human Services determines has
7 significant potential to lead to the development
8 of a covered countermeasure.

9 “(B) MODIFICATIONS; INCREASED INCEN-
10 TIVE FOR CONTRACT RESEARCH PAYMENTS.—
11 For purposes of subparagraph (A), subsection
12 (b) of section 41 shall be applied—

13 “(i) by substituting ‘eligible counter-
14 measures research’ for ‘qualified research’
15 each place it appears in paragraphs (2)
16 and (3) of such subsection, and

17 “(ii) by substituting ‘100 percent’ for
18 ‘65 percent’ in paragraph (3)(A) of such
19 subsection.

20 “(C) EXCLUSION FOR AMOUNTS FUNDED
21 BY GRANTS, ETC.—The term ‘eligible counter-
22 measures research expenses’ shall not include
23 any amount to the extent such amount is fund-
24 ed by any grant, contract, or otherwise by an-
25 other person (or any governmental entity).

1 “(2) COVERED COUNTERMEASURE.—The term
 2 ‘covered countermeasure’ has the meaning given
 3 such term in division C of the Department of De-
 4 fense, Emergency Supplemental Appropriations to
 5 Address Hurricanes in the Gulf of Mexico, and Pan-
 6 demic Influenza Act, 2006.

7 “(c) COORDINATION WITH CREDIT FOR INCREASING
 8 RESEARCH EXPENDITURES.—

9 “(1) IN GENERAL.—Except as provided in para-
 10 graph (2), any eligible countermeasures research ex-
 11 penses for a taxable year shall not be taken into ac-
 12 count for purposes of determining the credit allow-
 13 able under section 41 for such taxable year.

14 “(2) EXPENSES INCLUDED IN DETERMINING
 15 BASE PERIOD RESEARCH EXPENSES.—Any eligible
 16 countermeasures research expenses for any taxable
 17 year which are qualified research expenses (within
 18 the meaning of section 41(b)) shall be taken into ac-
 19 count in determining base period research expenses
 20 for purposes of applying section 41 to subsequent
 21 taxable years.

22 “(d) COORDINATION WITH CREDIT FOR CLINICAL
 23 TESTING EXPENSES FOR CERTAIN DRUGS FOR RARE
 24 DISEASES.—Any eligible countermeasures research ex-
 25 pense for a taxable year shall not be taken into account

1 for purposes of determining the credit allowable under sec-
 2 tion 45C for such taxable year.

3 “(e) CERTAIN RULES MADE APPLICABLE.—Rules
 4 similar to the rules of paragraphs (1) and (2) of section
 5 41(f) shall apply for purposes of this section.”.

6 (2) INCLUSION IN GENERAL BUSINESS CRED-
 7 IT.—Section 38(b) (as amended by this Act) is fur-
 8 ther amended by striking “and” at the end of para-
 9 graph (30), by striking the period at the end of
 10 paragraph (31) and inserting “, and”, and by add-
 11 ing at the end the following new paragraph:

12 “(32) the countermeasures research credit de-
 13 termined under section 45N.”.

14 (3) DENIAL OF DOUBLE BENEFIT.—Section
 15 280C (as amended by this Act) is further amended
 16 by adding at the end the following new subsection:

17 “(f) CREDIT FOR ELIGIBLE COUNTERMEASURES RE-
 18 SEARCH EXPENSES.—

19 “(1) IN GENERAL.—No deduction shall be al-
 20 lowed for that portion of the eligible counter-
 21 measures research expenses (as defined in section
 22 45N(b)) otherwise allowable as a deduction for the
 23 taxable year which is equal to the amount of the
 24 credit determined for such taxable year under sec-
 25 tion 45N(a).

1 “(2) CERTAIN RULES TO APPLY.—Rules similar
2 to the rules of paragraphs (2), (3), and (4) of sub-
3 section (c) shall apply for purposes of this sub-
4 section.”.

5 (4) DEDUCTION FOR UNUSED PORTION OF
6 CREDIT.—Section 196(c) (as amended by this Act)
7 is further amended by striking “and” at the end of
8 paragraph (13), by striking the period at the end of
9 paragraph (14) and inserting “, and”, and by add-
10 ing at the end the following new paragraph:

11 “(15) the countermeasures research credit de-
12 termined under section 45N(a).”.

13 (5) TECHNICAL AMENDMENT.—The table of
14 sections for subpart D of part IV of subchapter A
15 of chapter 1 is amended by adding at the end the
16 following new item:

“Sec. 45N. Credit for medical research related to developing countermeasures.”.

17 **SEC. 107. COUNTERMEASURES EQUITY TAX CREDIT.**

18 (a) IN GENERAL.—Subpart D of part IV of sub-
19 chapter A of chapter 1 (as amended by this Act) is further
20 amended by adding at the end the following new section:

21 **“SEC. 45O. COUNTERMEASURES EQUITY TAX CREDIT.**

22 “(a) ALLOWANCE OF CREDIT.—

23 “(1) GENERAL RULE.—For purposes of section
24 38, in the case of a taxpayer who holds a qualified
25 countermeasures equity investment on a credit allow-

1 ance date of such investment which occurs during
 2 the taxable year, the countermeasures equity tax
 3 credit determined under this section for such taxable
 4 year is an amount equal to the applicable percentage
 5 of the amount paid to the qualified countermeasures
 6 company solely in exchange for its stock at original
 7 issue.

8 “(2) APPLICABLE PERCENTAGE.—For purposes
 9 of paragraph (1), the applicable percentage is 40
 10 percent.

11 “(3) CREDIT ALLOWANCE DATE.—For purposes
 12 of paragraph (1), the term ‘credit allowance date’
 13 means, with respect to any qualified counter-
 14 measures equity investment—

15 “(A) the date on which such investment is
 16 initially made, and

17 “(B) each of the 3 subsequent anniversary
 18 dates of such date.

19 “(b) QUALIFIED COUNTERMEASURES EQUITY IN-
 20 VESTMENT.—For purposes of this section—

21 “(1) IN GENERAL.—The term ‘qualified coun-
 22 termeasures equity investment’ means any equity in-
 23 vestment in a qualified countermeasures company
 24 if—

1 “(A) such investment is acquired by the
2 taxpayer at its original issue (directly or
3 through an underwriter) solely in exchange for
4 cash,

5 “(B) not less than $\frac{1}{2}$ of such cash is used
6 by the qualified countermeasures company with
7 respect to research on covered countermeasures,
8 and

9 “(C) such investment is designated for
10 purposes of this section by the qualified coun-
11 termeasures company.

12 Such term shall not include any equity investment
13 issued by a qualified countermeasures company more
14 than 5 years after the date that such company re-
15 ceives an allocation under subsection (d). Any alloca-
16 tion not used within such 5-year period may be re-
17 allocated by the Secretary under subsection (d).

18 “(2) LIMITATION.—The maximum amount of
19 equity investments issued by a qualified counter-
20 measures company which may be designated under
21 paragraph (1)(C) by such company shall not exceed
22 the portion of the limitation amount allocated under
23 subsection (d) to such company.

24 “(3) TREATMENT OF SUBSEQUENT PUR-
25 CHASERS.—The term ‘qualified equity investment’

1 includes any equity investment which would (but for
2 paragraph (1)(A)) be a qualified equity investment
3 in the hands of the taxpayer if such investment was
4 a qualified equity investment in the hands of a prior
5 holder.

6 “(4) REDEMPTIONS.—A rule similar to the rule
7 of section 1202(c)(3) shall apply for purposes of this
8 subsection.

9 “(5) EQUITY INVESTMENT.—The term ‘equity
10 investment’ means any stock (other than non-
11 qualified preferred stock as defined in section
12 351(g)(2)) in an entity which is a corporation.

13 “(c) QUALIFIED COUNTERMEASURES COMPANY.—
14 For purposes of this section—

15 “(1) IN GENERAL.—The term ‘qualified coun-
16 termeasures company’ means any domestic bio-
17 medical research corporation (as defined in section
18 328(l)(9)(B)) that the Secretary of Health and
19 Human Services determines has significant potential
20 to lead to the development of a covered counter-
21 measure.

22 “(2) COVERED COUNTERMEASURE.—The term
23 ‘covered countermeasure’ has the meaning given
24 such term in division C of the Department of De-
25 fense, Emergency Supplemental Appropriations to

1 Address Hurricanes in the Gulf of Mexico, and Pan-
2 demic Influenza Act, 2006.

3 “(d) NATIONAL LIMITATION ON AMOUNT OF INVEST-
4 MENTS DESIGNATED.—

5 “(1) IN GENERAL.—There is a qualified coun-
6 termeasures equity tax credit limitation of
7 \$150,000,000 for each taxable year.

8 “(2) ALLOCATION OF LIMITATION.—The limita-
9 tion under paragraph (1) shall be allocated by the
10 Secretary among qualified countermeasures compa-
11 nies selected by the Secretary. In making allocations
12 under the preceding sentence, the Secretary shall
13 give priority to the extent to which it is reasonably
14 anticipated that a qualified countermeasures com-
15 pany would have insufficient taxable income and tax
16 liability to utilize research tax credits and other tax
17 incentives provided by section 106 of the U.S.
18 Healthcare Technologies Competitiveness Act of
19 2006.

20 “(3) CARRYOVER OF UNUSED LIMITATION.—If
21 the qualified countermeasures equity tax credit limi-
22 tation for any taxable year exceeds the aggregate
23 amount allocated under paragraph (2) for such year,
24 such limitation for the succeeding taxable year shall
25 be increased by the amount of such excess.

1 “(e) DENIAL OF DOUBLE BENEFIT.—With respect to
2 a qualified countermeasures equity investment in a quali-
3 fied countermeasures company, the countermeasures eq-
4 uity tax credit described in subsection (a) shall not apply
5 in the case of a taxable year in which such qualified coun-
6 termasures company elects to apply a tax incentive de-
7 scribed in section 106 of the U.S. Healthcare Technologies
8 Competitiveness Act of 2006.

9 “(f) RECAPTURE OF CREDIT IN CERTAIN CASES.—
10 “(1) IN GENERAL.—If, at any time during the
11 4-year period beginning on the date of the original
12 issue of a qualified countermeasures equity invest-
13 ment in a qualified countermeasures company, there
14 is a recapture event with respect to such investment,
15 then the tax imposed by this chapter for the taxable
16 year in which such event occurs shall be increased
17 by the credit recapture amount.

18 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
19 poses of paragraph (1), the credit recapture amount
20 is an amount equal to the sum of—

21 “(A) the aggregate decrease in the credits
22 allowed to the taxpayer under section 38 for all
23 prior taxable years which would have resulted if
24 no credit had been determined under this sec-
25 tion with respect to such investment, plus

1 “(B) interest at the underpayment rate es-
 2 tablished under section 6621 on the amount de-
 3 termined under subparagraph (A) for each
 4 prior taxable year for the period beginning on
 5 the due date for filing the return for the prior
 6 taxable year involved.

7 No deduction shall be allowed under this chapter for
 8 interest described in subparagraph (B).

9 “(3) RECAPTURE EVENT.—For purposes of
 10 paragraph (1), there is a recapture event with re-
 11 spect to a qualified countermeasures equity invest-
 12 ment in a qualified countermeasures company if—

13 “(A) such company ceases to be a qualified
 14 countermeasures company, or

15 “(B) such investment is redeemed by such
 16 company.

17 “(4) SPECIAL RULES.—

18 “(A) TAX BENEFIT RULE.—The tax for
 19 the taxable year shall be increased under para-
 20 graph (1) only with respect to credits allowed
 21 by reason of this section which were used to re-
 22 duce tax liability. In the case of credits not so
 23 used to reduce tax liability, the carryforwards
 24 and carrybacks under section 39 shall be appro-
 25 priately adjusted.

1 “(B) NO CREDITS AGAINST TAX.—Any in-
 2 crease in tax under this subsection shall not be
 3 treated as a tax imposed by this chapter for
 4 purposes of determining the amount of any
 5 credit under this chapter or for purposes of sec-
 6 tion 55.

7 “(g) BASIS REDUCTION.—The basis of any qualified
 8 countermeasures equity investment shall be reduced by the
 9 amount of any credit determined under this section with
 10 respect to such investment. This subsection shall not apply
 11 for purposes of sections 1202, 1400B, and 1400F.

12 “(h) REGULATIONS.—The Secretary shall prescribe
 13 such regulations as may be appropriate to carry out this
 14 section, including regulations which—

15 “(1) prevent the abuse of the purposes of this
 16 section,

17 “(2) impose appropriate reporting require-
 18 ments, and

19 “(3) apply the provisions of this section to
 20 newly formed entities.”.

21 (b) CREDIT TO BE PART OF GENERAL BUSINESS
 22 CREDIT.—Section 38(b) (as amended by this Act) is fur-
 23 ther amended by striking “and” at the end of paragraph
 24 (31), by striking the period at the end of paragraph (32)

1 and inserting “, and”, and by adding at the end the fol-
 2 lowing:

3 “(33) the countermeasures equity investment
 4 credit determined under section 45O(a).”.

5 (c) DEDUCTION FOR UNUSED PORTION OF CRED-
 6 IT.—Section 196(c) (as amended by this Act) is further
 7 amended by striking “and” at the end of paragraph (14),
 8 by striking the period at the end of paragraph (15) and
 9 inserting “, and”, and by adding at the end the following
 10 new paragraph:

11 “(16) the countermeasures equity investment
 12 credit determined under section 45O(a).”.

13 (d) CLERICAL AMENDMENT.—The table of sections
 14 for subpart D of part IV of subchapter A of chapter 1
 15 (as amended by this Act) is further amended by adding
 16 after the item relating to section 45N the following:

“Sec. 45O. Countermeasures equity tax credit.”.

17 (e) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to taxable years beginning after
 19 December 31, 2006.

20 **SEC. 108. BIOTECHNOLOGY SCIENCE PARKS.**

21 (a) EXPENSING.—

22 (1) IN GENERAL.—Section 179(d) (relating to
 23 definitions and special rules) is amended by adding
 24 at the end the following new paragraph:

1 “(11) APPLICATION OF SECTION TO PROPERTY
2 PLACED IN SERVICE IN BIOTECHNOLOGY SCIENCE
3 PARKS.—

4 “(A) IN GENERAL.—In the case of any sec-
5 tion 179 property placed in service in any bio-
6 technology science park, this section shall be
7 applied without regard to paragraphs (1) and
8 (2) of subsection (b).

9 “(B) BIOTECHNOLOGY SCIENCE PARK.—

10 “(i) IN GENERAL.—The term ‘bio-
11 technology science park’ means a group of
12 interrelated companies and institutions, in-
13 cluding suppliers, service providers, institu-
14 tions of higher education, start-up incuba-
15 tors, and trade associations, that—

16 “(I) cooperates and competes in
17 the field of biomedical research and
18 medical devices,

19 “(II) is located in the United
20 States,

21 “(III) promotes real estate devel-
22 opment, technology transfer, and
23 partnerships between such companies
24 and institutions, and

1 “(IV) is not a business or indus-
2 trial park.

3 “(ii) BUSINESS OR INDUSTRIAL
4 PARK.—The term ‘business or industrial
5 park’ means a for-profit real estate venture
6 of businesses or industries which do not
7 necessarily reinforce each other through
8 supply chain or technology transfer mecha-
9 nisms.”.

10 (2) EFFECTIVE DATE.—The amendment made
11 by this subsection shall apply with respect to prop-
12 erty placed in service after the date of the enactment
13 of this Act.

14 (b) TAX CREDIT FOR RESEARCH ACTIVITIES.—

15 (1) IN GENERAL.—Section 41(a) (relating to
16 credit for increasing research activities) is amended
17 by striking “and” at the end of paragraph (2), by
18 striking the period at the end of paragraph (3) and
19 inserting “, and”, and by adding at the end the fol-
20 lowing new paragraph:

21 “(4) 20 percent of the qualified research ex-
22 penses paid or incurred by the taxpayer in carrying
23 on any trade or business located in a biotechnology
24 science park during the taxable year.”.

1 (2) BIOTECHNOLOGY SCIENCE PARK.—Section
2 41(f) (relating to special rules) is amended by add-
3 ing at the end the following new paragraph:

4 “(7) BIOTECHNOLOGY SCIENCE PARK.—

5 “(A) IN GENERAL.—The term ‘bio-
6 technology science park’ means a group of
7 interrelated companies and institutions, includ-
8 ing suppliers, service providers, institutions of
9 higher education, start-up incubators, and trade
10 associations, that—

11 “(i) cooperates and competes in the
12 field of biomedical research and medical
13 devices,

14 “(ii) is located in the United States,

15 “(iii) promotes real estate develop-
16 ment, technology transfer, and partner-
17 ships between such companies and institu-
18 tions, and

19 “(iv) is not a business or industrial
20 park.

21 “(B) BUSINESS OR INDUSTRIAL PARK.—

22 The term ‘business or industrial park’ means a
23 for-profit real estate venture of businesses or
24 industries which do not necessarily reinforce

1 each other through supply chain or technology
2 transfer mechanisms.”.

3 (3) EFFECTIVE DATE.—The amendments made
4 by this subsection shall apply to taxable years begin-
5 ning after December 31, 2006.

6 (c) PRIVATE BUSINESS USE OF A BOND-FINANCED
7 FACILITY.—

8 (1) IN GENERAL.—Subparagraph (A) of section
9 141(b)(6) (defining private business use) is amended
10 by inserting “or use in the performance of research
11 using, in whole or in part, funds of the United
12 States or any agency or instrumentality thereof” be-
13 fore “shall not be taken into account”.

14 (2) EFFECTIVE DATE.—

15 (A) IN GENERAL.—The amendment made
16 by this subsection shall apply to any use on or
17 after the date of the enactment of this Act.

18 (B) NO INFERENCE.—Nothing in the
19 amendment made by this subsection shall be
20 construed to create any inference with respect
21 to the use of tax-exempt bond financed facilities
22 before the effective date of such amendment.

1 **SEC. 109. EXPENSING FOR QUALIFIED MEDICAL RESEARCH**
2 **EQUIPMENT.**

3 (a) IN GENERAL.—Part VI of subchapter B of chap-
4 ter 1 (relating to itemized deductions for individuals and
5 corporations) is amended by inserting after section 179D
6 the following new section:

7 **“SEC. 179E. ELECTION TO EXPENSE CERTAIN MEDICAL RE-**
8 **SEARCH EQUIPMENT.**

9 “(a) TREATMENT AS EXPENSES.— A biomedical re-
10 search corporation (as defined in section 382(l)(9)(B))
11 may elect to treat the cost of any qualified medical re-
12 search property as an expense which is not chargeable to
13 capital account. Any cost so treated shall be allowed as
14 a deduction for the taxable year in which the qualified
15 property is placed in service.

16 “(b) ELECTION.—

17 “(1) IN GENERAL.—An election under this sec-
18 tion for any taxable year shall be made on the tax-
19 payer’s return of the tax imposed by this chapter for
20 the taxable year. Such election shall be made in such
21 manner as the Secretary may by regulations pre-
22 scribe.

23 “(2) ELECTION IRREVOCABLE.—Any election
24 made under this section may not be revoked except
25 with the consent of the Secretary.

1 “(c) QUALIFIED MEDICAL RESEARCH PROPERTY.—

2 The term ‘qualified medical research property’ means any
3 property—

4 “(1) the original use of which commences with
5 the taxpayer,

6 “(2) that is placed in service by the taxpayer
7 after the date of the enactment of this section,

8 “(3) that is customary in the bioscience re-
9 search industry, and

10 “(4) that is required for the taxpayer’s ad-
11 vanced biomedical research.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) Section 1245(a) is amended by inserting
14 “179E,” after “179D,” both places it appears in
15 paragraphs (2)(C) and (3)(C).

16 (2) Section 263(a)(1) is amended by striking
17 “or” at the end of subparagraph (J), by striking the
18 period at the end of subparagraph (K) and inserting
19 “, or”, and by inserting after subparagraph (K) the
20 following new subparagraph:

21 “(L) expenditures for which a deduction is
22 allowed under section 179E.”.

23 (3) Section 312(k)(3)(B) is amended by strik-
24 ing “or 179D” each place it appears in the heading
25 and text and inserting “179D, or 179E”.

1 (4) The table of sections for part VI of sub-
 2 chapter B of chapter 1 of such Code is amended by
 3 inserting after the item relating to section 179D the
 4 following new item:

“Sec. 179E. Election to expense certain medical research equipment.”.

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to properties placed in service after
 7 the date of the enactment of this Act.

8 **TITLE II—PROVISIONS RELAT-** 9 **ING TO INVESTOR TAX INCEN-** 10 **TIVES**

11 **SEC. 201. CAPITAL GAINS ROLLOVER.**

12 (a) IN GENERAL.—

13 (1) Section 1045(a) is amended by inserting
 14 “or biomedical research corporation stock” after
 15 “qualified small business stock” each place it ap-
 16 pears herein.

17 (2) Section 1045(b) is amended by redesign-
 18 nating paragraphs (2), (3), (4), and (5) as para-
 19 graphs (3), (4), (5), and (6), respectively, and by in-
 20 serting after paragraph (1) the following new para-
 21 graph:

22 “(2) BIOMEDICAL RESEARCH CORPORATION.—
 23 The term ‘biomedical research corporation’ has the
 24 meaning given to such term in section
 25 382(l)(9)(B).”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) The heading for section 1045 is amended by
3 inserting “**OR BIOMEDICAL RESEARCH**” after
4 “**SMALL BUSINESS**” each time it appears.

5 (2) The item relating to section 1045 in the
6 table of sections for part III of subchapter O of
7 chapter 1 is amended by inserting “or biomedical re-
8 search” after “small business” each time it appears.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 December 31, 2006.

12 **SEC. 202. TREATMENT OF ORDINARY LOSSES.**

13 (a) IN GENERAL.—

14 (1) Section 1244(a) and (d) are amended by in-
15 serting “or biomedical research corporation stock”
16 after “1244 stock.”

17 (2) Section 1244 is amended by redesignating
18 subsection (d) as subsection (e) and by inserting
19 after subsection (c) the following new subsection:

20 “(d) BIOMEDICAL RESEARCH CORPORATION STOCK
21 DEFINED.—For purposes of this section—

22 “(1) IN GENERAL.—The term ‘biomedical re-
23 search corporation stock’ means stock in a domestic
24 corporation if—

1 “(A) at the time such stock is issued, such
2 corporation was a biomedical research corpora-
3 tion, and

4 “(B) such stock was issued by such cor-
5 poration for money or other property (other
6 than stock or securities).

7 “(2) BIOMEDICAL RESEARCH CORPORATION.—

8 “(A) IN GENERAL.— The term ‘biomedical
9 research corporation’ means a corporation
10 that—

11 “(i) is subject to tax under this sub-
12 chapter at the time such stock is issued,

13 “(ii) is not in bankruptcy,

14 “(iii) holds the rights to a drug or
15 biologic for which an investigational new
16 drug application is in effect under section
17 505 of the Federal Food, Drug, and Cos-
18 metic Act or holds the rights to a device
19 for which an investigational device exemp-
20 tion is approved under section 520(g) of
21 such Act,

22 “(iv) certifies that, as of the time of
23 such stock issuance, the drug, biologic, or
24 device is, or in the 6-month period begin-
25 ning 3 months before such closing has

1 been, under study pursuant to an active in-
 2 vestigational new drug or device applica-
 3 tion approved by the Commissioner of the
 4 Food and Drug Administration,

5 “(v) has aggregate gross assets before
 6 and after the issuance that do not exceed
 7 \$50,000,000, and

8 “(vi) agrees to submit such reports to
 9 the Secretary and to shareholders as the
 10 Secretary may require to carry out the
 11 purposes of this section.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) The heading for section 1244 is amended by
 14 inserting “**OR BIOMEDICAL RESEARCH**” before
 15 “**STOCK**”.

16 (2) The item relating to section 1244 in the
 17 table of sections for part IV of subchapter P of
 18 chapter 1 is amended by inserting “or biomedical re-
 19 search” before “stock.”

20 (c) EFFECTIVE DATE.—The amendments made by
 21 this section shall apply to stock issued after December 31,
 22 2006.

23 **SEC. 203. EQUITY CREDIT FOR INCUBATIONAL FIRMS.**

24 (a) IN GENERAL.—Subpart D of part IV of sub-
 25 chapter A of chapter 1 (as amended by this Act) is amend-

1 ed by inserting after section 45O the following new sec-
2 tion:

3 **“SEC. 45P. INCUBATIONAL EQUITY TAX CREDIT.**

4 “(a) ALLOWANCE OF CREDIT.—

5 “(1) GENERAL RULE.—For purposes of section
6 38, in the case of a taxpayer who makes a qualified
7 incubational equity investment during the taxable
8 year, the incubational equity tax credit determined
9 under this section for such taxable year is an
10 amount equal to the applicable percentage of the
11 amount paid to the qualified incubational company
12 solely in exchange for its stock at original issue.

13 “(2) APPLICABLE PERCENTAGE.—For purposes
14 of paragraph (1), the applicable percentage is 40
15 percent.

16 “(b) QUALIFIED INCUBATIONAL EQUITY INVEST-
17 MENT.—For purposes of this section—

18 “(1) IN GENERAL.—The term ‘qualified incuba-
19 tional equity investment’ means any equity invest-
20 ment in a qualified incubational company if—

21 “(A) such investment is acquired by the
22 taxpayer at its original issue (directly or
23 through an underwriter) solely in exchange for
24 cash,

1 “(B) not less than $\frac{1}{2}$ of such cash is used
2 by the qualified incubational company with re-
3 spect to qualifying research under section 41,
4 and

5 “(C) such investment is designated for
6 purposes of this section by the qualified incuba-
7 tional company.

8 Such term shall not include any equity investment
9 issued by a qualified incubational company more
10 than 5 years after the date that such company re-
11 ceives an allocation under subsection (d). Any alloca-
12 tion not used within such 5-year period may be re-
13 allocated by the Secretary under subsection (d).

14 “(2) LIMITATION.—The maximum amount of
15 equity investments issued by a qualified incubational
16 company which may be designated under paragraph
17 (1)(C) by such company shall not exceed the portion
18 of the limitation amount allocated under subsection
19 (f) to such company.

20 “(3) TREATMENT OF SUBSEQUENT PUR-
21 CHASERS.—The term ‘qualified equity investment’
22 includes any equity investment which would (but for
23 paragraph (1)(A)) be a qualified equity investment
24 in the hands of the taxpayer if such investment was

1 a qualified equity investment in the hands of a prior
2 holder.

3 “(4) REDEMPTIONS.—A rule similar to the rule
4 of section 1202(c)(3) shall apply for purposes of this
5 subsection.

6 “(5) EQUITY INVESTMENT.—The term ‘equity
7 investment’ means any stock (other than non-
8 qualified preferred stock as defined in section
9 351(g)(2)) in an entity which is a corporation.

10 “(c) QUALIFIED INCUBATIONAL COMPANY.—For
11 purposes of this section the term ‘qualified incubational
12 company’ means any domestic biomedical research cor-
13 poration (as defined in section 382(l)(9)(B)) subject to tax
14 under subchapter C of this chapter, that has 25 employees
15 or less and gross assets of less than \$25,000,000.

16 “(d) NATIONAL LIMITATION ON AMOUNT OF INVEST-
17 MENTS DESIGNATED.—

18 “(1) IN GENERAL.—There is an incubational
19 equity tax credit limitation of \$500,000,000 for each
20 taxable year.

21 “(2) ALLOCATION OF LIMITATION.—The limita-
22 tion under paragraph (1) shall be allocated by the
23 Secretary among qualified incubational companies
24 selected by the Secretary. In making allocations
25 under the preceding sentence, the Secretary shall

1 give priority to the extent to which it is reasonably
2 anticipated that a qualified incubational company
3 would have insufficient taxable income and tax liabil-
4 ity to utilize the section 41 research tax credit.

5 “(3) CARRYOVER OF UNUSED LIMITATION.—If
6 the qualified incubational equity tax credit limitation
7 for any taxable year exceeds the aggregate amount
8 allocated under paragraph (2) for such year, such
9 limitation for the succeeding taxable year shall be in-
10 creased by the amount of such excess.

11 “(e) RECAPTURE OF CREDIT IN CERTAIN CASES.—

12 “(1) IN GENERAL.—If, at any time during the
13 4-year period beginning on the date of the original
14 issue of a qualified incubational equity investment in
15 a qualified incubational company, there is a recap-
16 ture event with respect to such investment, then the
17 tax imposed by this chapter for the taxable year in
18 which such event occurs shall be increased by the
19 credit recapture amount.

20 “(2) CREDIT RECAPTURE AMOUNT.—For pur-
21 poses of paragraph (1), the credit recapture amount
22 is an amount equal to the sum of—

23 “(A) the aggregate decrease in the credits
24 allowed to the taxpayer under section 38 for all
25 prior taxable years which would have resulted if

1 no credit had been determined under this sec-
 2 tion with respect to such investment; plus

3 “(B) interest at the underpayment rate es-
 4 tablished under section 6621 on the amount de-
 5 termined under subparagraph (A) for each
 6 prior taxable year for the period beginning on
 7 the due date for filing the return for the prior
 8 taxable year involved.

9 No deduction shall be allowed under this chapter for
 10 interest described in subparagraph (B).

11 “(3) RECAPTURE EVENT.—For purposes of
 12 paragraph (1), there is a recapture event with re-
 13 spect to a qualified countermeasures equity invest-
 14 ment in a qualified countermeasures company if—

15 “(A) such company ceases to be a qualified
 16 biomedical research corporation (as defined in
 17 section 382(l)(9)(B)), or

18 “(B) such investment is redeemed by such
 19 company.

20 “(4) SPECIAL RULES.—

21 “(A) TAX BENEFIT RULE.—The tax for
 22 the taxable year shall be increased under para-
 23 graph (1) only with respect to credits allowed
 24 by reason of this section which were used to re-
 25 duce tax liability. In the case of credits not so

1 used to reduce tax liability, the carryforwards
 2 and carrybacks under section 39 shall be appro-
 3 priately adjusted.

4 “(B) NO CREDITS AGAINST TAX.—Any in-
 5 crease in tax under this subsection shall not be
 6 treated as a tax imposed by this chapter for
 7 purposes of determining the amount of any
 8 credit under this chapter or for purposes of sec-
 9 tion 55.

10 “(f) BASIS REDUCTION.—The basis of any qualified
 11 incubational equity investment shall be reduced by the
 12 amount of any credit determined under this section with
 13 respect to such investment. This subsection shall not apply
 14 for purposes of sections 1202, 1400B, and 1400F.

15 “(g) REGULATIONS.—The secretary shall prescribe
 16 such regulations as may be appropriate to carry out this
 17 section, including regulations which—

18 “(1) prevent the abuse of the purposes of this
 19 section,

20 “(2) impose appropriate reporting require-
 21 ments, and

22 “(3) apply the provisions of this section to
 23 newly formed entities.”.

24 (b) CREDIT TO BE PART OF GENERAL BUSINESS
 25 CREDIT.—Section 38(b) (as amended by this Act) is fur-

1 ther amended by striking “and” at the end of paragraph
 2 (32), by striking the period at the end of paragraph (33)
 3 and inserting “, and”, and by adding at the end the fol-
 4 lowing:

5 “(34) the incubational equity tax credit deter-
 6 mined under section 45N(a).”.

7 (c) DEDUCTION FOR UNUSED PORTION OF CRED-
 8 IT.—Section 196(c) of such Code (defining qualified busi-
 9 ness credits), as amended by this section, is amended by
 10 striking “and” at the end of paragraph (15), by striking
 11 the period at the end of paragraph (16) and inserting “,
 12 and”, and by adding at the end the following new para-
 13 graph:

14 “(17) the incubational equity tax credit deter-
 15 mined under section 45P(a).”.

16 (d) CLERICAL AMENDMENT.—The table of sections
 17 for subpart D of part IV of subchapter A of chapter 1
 18 (as amended by this Act) is further amended by adding
 19 after the item relating to section 45O the following new
 20 item:

“Sec. 45P. Incubational equity tax credit.”.

21 (e) EFFECTIVE DATE.—The amendments made by
 22 this section shall apply to taxable years beginning after
 23 December 31, 2006.

24 **SEC. 204. MODIFICATION OF PASSIVE LOSS RULES.**

25 (a) IN GENERAL.—Section 469(i) is amended—

1 (1) by inserting “or biomedical research cor-
 2 poration activities” after “real estate activities” each
 3 place it appears in paragraphs (1) and (4), and

4 (2) by inserting “or biomedical or device re-
 5 search corporation activity” after “real estate activ-
 6 ity” in paragraph (6)(A).

7 (b) BIOMEDICAL RESEARCH CORPORATION DE-
 8 FINED.—Section 469(i) is amended by inserting the fol-
 9 lowing new paragraph:

10 “(7) BIOMEDICAL RESEARCH CORPORATION.—
 11 The term ‘biomedical research corporation’ has the
 12 meaning given such term in section 382(l)(9)(B).”.

13 (c) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to losses incurred after December
 15 31, 2006.

16 **SEC. 205. MODIFICATION OF SUBCHAPTER S RULES.**

17 (a) IN GENERAL.—Section 1361(b)(1) is amended by
 18 inserting the following flush sentence: “In the case of a
 19 biomedical research corporation (as defined in section
 20 382(l)(9)(B)), subparagraph (A) shall be applied by sub-
 21 stituting ‘150’ for ‘100’.”

22 (b) EFFECTIVE DATE.—The amendment made by
 23 this section shall apply to taxable years beginning after
 24 December 31, 2006.

1 **SEC. 206. TREATMENT OF BONDS FOR BIOMEDICAL RE-**
 2 **SEARCH FACILITIES AS EXEMPT FACILITY**
 3 **BONDS.**

4 (a) TREATMENT AS EXEMPT FACILITY BONDS.—
 5 Subsection (a) of section 142 (relating to exempt facility
 6 bond) is amended by striking “or” at the end of paragraph
 7 (14), by striking the period at the end of paragraph (15)
 8 and inserting “, or”, and by adding at the end the fol-
 9 lowing new paragraph:

10 “(16) biomedical research facilities.”.

11 (b) BIOMEDICAL RESEARCH FACILITIES.—Section
 12 142 is amended by adding at the end the following new
 13 subsection:

14 “(n) BIOMEDICAL RESEARCH FACILITY.—For pur-
 15 poses of this section—

16 “(1) IN GENERAL.— The term ‘biomedical re-
 17 search facility’ means a facility owned by a private,
 18 for-profit entity primarily utilized for biomedical re-
 19 search.

20 “(2) BIOMEDICAL RESEARCH DESCRIBED.—
 21 The term ‘biomedical research’ refers to research
 22 into a drug or biologic (or related medical device)
 23 conducted pursuant to an investigational use exemp-
 24 tion under section 505(i) of the Federal Food, Drug,
 25 and Cosmetic Act.

1 “(3) LIMITATION ON AGGREGATE FACE
2 AMOUNT OF TAX-EXEMPT FINANCING.—

3 “(A) IN GENERAL.—An issue shall not be
4 treated as an issue described in subsection
5 (a)(16) unless—

6 “(i) the Secretary has allocated an
7 amount to such issue under this para-
8 graph, and

9 “(ii) the aggregate face amount of
10 bonds issued pursuant to such issue does
11 not exceed such amount.

12 “(B) ALLOCATION.— The Secretary may
13 allocate amounts to issues under this paragraph
14 in such manner as the Secretary determines ap-
15 propriate, except that the aggregate amount so
16 allocated shall not exceed \$15,000,000,000.

17 “(C) REFUNDING BONDS.— Subparagraph
18 (A) shall not apply with respect to any bond the
19 proceeds of which are used exclusively to refund
20 a bond issued pursuant to subsection (a)(16)
21 (or a bond which is a part of a series of
22 refundings of a bond so issued) if the amount
23 of the refunding bond does not exceed the out-
24 standing amount of the refunded bond.”.

1 (c) EXEMPTION FROM GENERAL STATE VOLUME
 2 CAPS.—Paragraph (3) of section 146(g) (relating to ex-
 3 ception for certain bonds) is amended by striking “or
 4 (15)” and inserting “(15), or (16)”.

5 (d) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to bonds issued after December
 7 31, 2006.

8 **SEC. 207. INCENTIVES FOR BIOTECHNOLOGY ZONES.**

9 (a) IN GENERAL.—Subchapter U of chapter 1 (relat-
 10 ing to designation and treatment of empowerment zones,
 11 enterprise communities, and rural development investment
 12 areas) is amended by redesignating part V as part VI, by
 13 redesignating section 1397F as section 1397G, and by in-
 14 serting after part IV the following new part:

15 **“PART V—INCENTIVES FOR BIOTECHNOLOGY**
 16 **ZONES**

“Sec. 1397F. Credit to holders of qualified biotechnology zone bonds.

17 **“SEC. 1397F. CREDIT TO HOLDERS OF QUALIFIED BIO-**
 18 **TECHNOLOGY ZONE BONDS.**

19 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
 20 gible taxpayer who holds a qualified biotechnology zone
 21 bond on the credit allowance date of such bond which oc-
 22 curs during the taxable year, there shall be allowed as a
 23 credit against the tax imposed by this chapter for such
 24 taxable year the amount determined under subsection (b).

1 “(b) AMOUNT OF CREDIT.—

2 “(1) IN GENERAL.—The amount of the credit
3 determined under this subsection with respect to any
4 qualified biotechnology zone bond is the amount
5 equal to the product of—

6 “(A) the credit rate determined by the Sec-
7 retary under paragraph (2) for the month in
8 which such bond was issued, multiplied by

9 “(B) the face amount of the bond held by
10 the taxpayer on the credit allowance date.

11 “(2) DETERMINATION.—During each calendar
12 month, the Secretary shall determine a credit rate
13 which shall apply to bonds issued during the fol-
14 lowing calendar month. The credit rate for any
15 month is the percentage which the Secretary esti-
16 mates will permit the issuance of qualified bio-
17 technology zone bonds without discount and without
18 interest cost to the issuer.

19 “(c) LIMITATION BASED ON AMOUNT OF TAX.—The
20 credit allowed under subsection (a) for any taxable year
21 shall not exceed the excess of—

22 “(1) the sum of the regular tax liability (as de-
23 fined in section 26(b)) plus the tax imposed by sec-
24 tion 55, over

1 “(2) the sum of the credits allowable under part
2 IV of subchapter A (other than subpart C thereof,
3 relating to refundable credits).

4 “(d) QUALIFIED BIOTECHNOLOGY ZONE BOND.—
5 For purposes of this section—

6 “(1) IN GENERAL.—The term ‘qualified bio-
7 technology zone bond’ means any bond issued as
8 part of an issue if—

9 “(A) 95 percent or more of the proceeds of
10 such issue are to be used for a qualified pur-
11 pose with respect to a qualified biotechnology
12 zone entity selected by an eligible State busi-
13 ness development agency,

14 “(B) the bond is issued by a State or local
15 Government within the jurisdiction of which
16 such biotechnology zone is located,

17 “(C) the issuer—

18 “(i) designates such bond for purposes
19 of this section, and

20 “(ii) certifies that it has the written
21 approval of the eligible State business de-
22 velopment agency for such bond issuance,
23 and

1 “(D) the term of each bond which is part
2 of such issue does not exceed the maximum
3 term permitted under paragraph (2).

4 “(2) TERM REQUIREMENT.—During each cal-
5 endar month, the Secretary shall determine the max-
6 imum term permitted under this paragraph for
7 bonds issued during the following calendar month.
8 Such maximum term shall be the term which the
9 Secretary estimates will result in the present value
10 of the obligation to repay the principal on the bond
11 being equal to 50 percent of the face amount of the
12 bond. Such present value shall be determined using
13 as a discount rate the average annual interest rate
14 of tax-exempt obligations having a term of 10 years
15 or more which are issued during the month. If the
16 term as so determined is not a multiple of a whole
17 year, such term shall be rounded to the next highest
18 whole year.

19 “(3) QUALIFIED BIOTECHNOLOGY ZONE ENTI-
20 TY.—

21 “(A) IN GENERAL.—The term ‘qualified
22 biotechnology zone entity’ means any for-profit
23 private entity in the business of biomedical re-
24 search (or a medical device manufacturer) if—

25 “(i) such entity is not in bankruptcy,

1 “(ii) such entity holds the rights to a
2 drug or biologic for which an investiga-
3 tional new drug application is in effect
4 under section 505 of the Federal Food,
5 Drug, and Cosmetic Act (or manufactures
6 a related medical device), or holds the
7 rights to a device for which an investiga-
8 tional device exemption is approved under
9 section 520(g) of such Act, and

10 “(iii) such entity certifies that, as of
11 the time of such closing, the drug, biologic,
12 or device is, or in the 6-month period be-
13 ginning 3 months before such closing has
14 been, under study pursuant to an inves-
15 tigational use exemption under section
16 505(i) or section 520(g) of the Federal
17 Food, Drug, and Cosmetic Act.

18 “(B) ELIGIBLE STATE DEVELOPMENT
19 AGENCY.—The term ‘eligible State development
20 agency’ means any State agency with a purpose
21 of developing a State’s biotechnology busi-
22 nesses.

23 “(4) QUALIFIED PURPOSE.—The term ‘quali-
24 fied purpose’ means, with respect to any qualified

1 biotechnology zone, constructing or developing facili-
2 ties utilized in the biomedical research field.

3 “(5) ELIGIBLE TAXPAYER.—The term ‘eligible
4 taxpayer’ means—

5 “(A) a bank (within the meaning of section
6 581),

7 “(B) an insurance company to which sub-
8 chapter L applies, or

9 “(C) a corporation actively engaged in the
10 business of lending money.

11 “(e) LIMITATION ON AMOUNT OF BONDS DES-
12 IGNATED.—

13 “(1) NATIONAL LIMITATION.—There is a na-
14 tional biotechnology zone bond limitation of
15 \$500,000,000 for each calendar year.

16 “(2) ALLOCATION OF LIMITATION.—The na-
17 tional biotechnology zone bond limitation for a cal-
18 endar year shall be allocated by the Secretary among
19 qualified companies selected by the Secretary. In
20 making allocations under the preceding sentence, the
21 Secretary shall give priority to the extent to which
22 it is reasonably anticipated that a qualified company
23 would have insufficient taxable income and tax liabil-
24 ity to utilize research tax credits and other similar
25 credits.

1 “(3) DESIGNATION SUBJECT TO LIMITATION
2 AMOUNT.—The maximum aggregate face amount of
3 bonds issued during any calendar year which may be
4 designated under subsection (d)(1) with respect to
5 any qualified biotechnology zone shall not exceed the
6 limitation amount allocated to such academy under
7 paragraph (2) for such calendar year.

8 “(4) CARRYOVER OF UNUSED LIMITATION.—If,
9 for any calendar year the limitation amount for any
10 State, exceeds the amount of bonds issued during
11 such year which are designated under subsection
12 (d)(1) with respect to qualified biotechnology zone
13 facilities within such State, the limitation amount
14 for such State for the following calendar year shall
15 be increased by the amount of such excess.

16 “(f) OTHER DEFINITIONS.—For purposes of this sec-
17 tion—

18 “(1) CREDIT ALLOWANCE DATE.—The term
19 ‘credit allowance date’ means, with respect to any
20 issue, the last day of the 1-year period beginning on
21 the date of issuance of such issue and the last day
22 of each successive 1-year period thereafter.

23 “(2) BOND.—The term ‘bond’ includes any ob-
24 ligation.

1 “(3) STATE.—The term ‘State’ includes the
2 District of Columbia and any possession of the
3 United States.

4 “(g) CREDIT INCLUDED IN GROSS INCOME.—Gross
5 income includes the amount of the credit allowed to the
6 taxpayer under this section.”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) The table of parts for subchapter U of
9 chapter 1 is amended by striking the last item and
10 inserting the following:

 “PART V. INCENTIVES FOR BIOTECHNOLOGY ZONES.

 “PART VI. REGULATIONS.”.

11 (2) The table of sections for part V, as so re-
12 designated, is amended to read as follows:

 “Sec. 1397G. Regulations.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to obligations issued after Decem-
15 ber 31, 2006.

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